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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,965	06/20/2006	Ezio Bombardelli	2503-1189	7314
<div>466 7590 06/22/2007</div> <div>YOUNG &amp; THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202</div> <div>EXAMINER MI, QIUWEN</div> <div>ART UNIT PAPER NUMBER 1655</div> <div>MAIL DATE DELIVERY MODE 06/22/2007 PAPER</div>				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/563,965	BOMBARDELLI, EZIO	
	<b>Examiner</b>	<b>Art Unit</b>	
	Qiuwen Mi	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 3, 6-8, and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

Applicant's amendment in the reply filed on 5/30/07 is acknowledged. Any rejection that is not reiterated is hereby withdrawn.

### **Election/Restrictions**

Applicant's election without traverse of claims 1-10, species visnadin, Ginkgo biloba dimeric flavones complexed with phospholipids, and Escin beta-sitosterol complexed with phospholipids in the reply filed on 11/10/2006 is maintained.

Claims 3, 6-8, and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Claims 11 and 12 are cancelled.

### **Claims Pending**

Claims 11 and 12 are cancelled. Claims 1-10 are pending. Claims 3, 6-8, and 10 are withdrawn. Claims 1, 2, 4, 5, and 9 are examined on the merits.

### **Claim Rejections –35 USC § 103**

The following is a quotation of 35, U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Bombardelli et al (US 5,679,358), and Cho et al (US 5,529,769).

Bombardelli et al teach a topical composition (gel) (col 4, lines 30-55) for treating cellulites (col 3, lines 65-67) comprising 1.5% esculoside (first vasoactive agent), and 0.5% Ginkgo biloba (second vasoactive) (col 4, lines 55-65).

Cho et al teach a topical (col 1, lines 5-10) composition (gel) for treating cellulite (see Abstract) comprising 1% escin (third vasoactive) and 1% *Ginkgo biloba* (second vasoactive) (col 12, Example 11; col 4, lines 50-55).

Applicant is requested to note that it is regarded that "intended use" of a composition or product will not further limit claims drawn to a composition or product. See, e.g., *Ex Parte Masham*, 2 USPQ2d 1647 (1987) and *In Re Hack* 114, USPQ 161. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Sussman*, 1943 C.D. 518; *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440

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F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to combine the inventions of Bombardelli et al and Cho et al since both of them teach topical compositions for treating cellulites individually in the art. Since both of the compositions yielded beneficial results in treating cellulite, one of ordinary skill in the art would have been motivated to make the modifications.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Applicant filed declaration under rule 132 and stated that the combination of the three vasoactive agents visnadin, *Ginkgo biloba*, and escin achieved statistically significance in treating cellulite. Applicant also argues that the references cited in the previous office action are used for different purposes thus there is no motivation for combining the references.

Based on Applicant's argument, the rejection in the previous office action is withdrawn, and new references are cited. In Bombardelli et al, a topical composition (gel) (col 4, lines 30-55) comprising 1.5% esculoside (first vasoactive agent), and 0.5% *Ginkgo biloba* (second vasoactive) (col 4, lines 55-65) is used for treating cellulites (col 3, lines 65-67). According to the reference, Bombardelli et al, the Applicants themselves, "observed parameters dramatically changed" (col 4, lines 5-10) in treating thigh cellulites (col 3, lines 65-67), which is presumably

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at least achieved statistical significance. In addition, Cho et al also teach a topical (col 1, lines 5-10) composition (gel) for treating cellulite (see Abstract) comprising 1% escin (third vasoactive) and 1% *Ginkgo biloba* (second vasoactive) (col 12, Example 11; col 4, lines 50-55). Cho et al also teach that the composition is particularly useful in reducing signs of cellulite (see Abstract). Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to combine the inventions of Bombardelli et al and Cho et al since both of them teach topical compositions for treating cellulites individually in the art. Since both of the compositions yielded beneficial results in treating cellulite, one of ordinary skill in the art would have been motivated to make the modifications. Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

### Conclusion


No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry Mckelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**MICHAEL MELLER**  
**PRIMARY EXAMINER**